

1 Alejandro S. Angulo (State Bar No. 217823)
aangulo@rutan.com
2 Joelle Leib (State Bar No. 340215)
jleib@rutan.com
3 RUTAN & TUCKER, LLP
18575 Jamboree Road, 9th Floor
4 Irvine, California 92612
Telephone: 714-641-5100
5 Facsimile: 714-546-9035

6 Attorneys for Defendants
ANDREW POLSKY, and SEFED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 WINGSAIL HOLDINGS, LLC, a
12 Washington Corporation, and YUNFEI
“KRISTY” BAI, an individual.

13 | Plaintiffs.

14 | VS.

15 ANDREW POLSKY, an individual, and
16 SEFED, a California Corporation, and
DOES 1 through 10,

17 Defendants.

Case No. 8:23-CV-02398-JWH-DFM
Judge: Hon. John W. Holcomb

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' EX PARTE
APPLICATION TO MOVE TRIAL
DATE AND EXTEND DISCOVERY
CUTOFF**

[Filed Concurrently with the Declaration
of Alejandro S. Angulo]

Date Action Filed: December 18, 2023
Trial Date: December 1, 2025

20 | //

21 | //

22 | //

23 | / / /

24 | / / /

25 | //

26 | //

27 | P

28 | P

1 **I. INTRODUCTION**

2 Discovery in this case began in November of 2024. (Angulo Decl. at ¶ 2.)
3 During that time, plaintiffs Wingsail Holdings, LLC (“Wingsail”) and Yunfei
4 “Kristy” Bai (“Bai,” and collectively with Wingsail, “Plaintiffs”) have propounded
5 just one set of requests for production of documents to each defendant, noticed one
6 deposition (for three days before the discovery cut-off), and filed zero discovery
7 motions. (Angulo Decl. at ¶¶ 2-6.)

8 Now, on their third set of attorneys and second amended complaint, Plaintiffs
9 move *ex parte* (just days before the discovery cut-off), asking the Court to move the
10 trial date, the discovery cut-off, and other related dates despite having spent the last
11 eight months doing virtually nothing to prosecute this case. ([ECF No. 75], the
12 “Application.”)

13 For the reasons explained below, the Application should be denied.

14 **II. FACTUAL AND PROCEDURAL HISTORY**

15 On December 18, 2023, Wingsail filed the original complaint in this case—
16 alleging, among other things, that defendants Andrew Polksky and SEFED
17 (collectively, “Defendants”) had breached their fiduciary duties and engaged in
18 fraud. ([ECF No. 1], “Original Complaint”.). Then, on March 15, 2024, the Court
19 granted Wingsail’s original counsel’s motion for leave to withdraw as counsel and
20 subsequently ordered their Original Complaint stricken in June of 2024 after
21 Wingsail failed to obtain new counsel. ([ECF Nos. 30, 35].) On June 6, 2024, the
22 Court entered “Judgment” in favor of Defendants. ([ECF 36], “Judgment”.)

23 Eventually, on June 28, 2024, Wingsail obtained new counsel. ([ECF Nos.
24 37, 38].) On August 2, 2024, the Court vacated its Judgment and allowed Plaintiffs
25 to file an amended complaint. ([ECF No. 44], “Order Granting Motion for
26 Reconsideration”.). Accordingly, on August 23, 2024, Plaintiffs filed their First
27 Amended Complaint.¹ ([ECF No. 46], “FAC” .)

28

¹ The Court may recall that Plaintiffs’ theory of the case changed dramatically

1 On December 23, 2024, the Court entered its Scheduling Order, whereby it
2 scheduled trial to begin on December 1, 2025 (the “Trial Date”) and set the
3 discovery cut-off date as July 25, 2025 (the “Discovery Cut-Off”). (Scheduling
4 Order, [ECF No. 63].) On January 13, 2025, Plaintiffs filed their Second Amended
5 Complaint. ([ECF No. 64], “Second Amended Complaint”.) Fourteen days later,
6 Defendants filed their motion to dismiss the Second amended Complaint. ([ECF
7 No. 68, “Motion to Dismiss”.) Then, on May 21, 2025, Plaintiffs again changed
8 counsel. ([ECF No. 74], “Order Granting Substitution of Attorney”.) On July 15,
9 2025, the Court denied Defendants’ Motion to Dismiss and ordered their Answer
10 due by August 1, 2025. ([ECF No. 76].)

11 **III. THE EX PARTE APPLICATION SHOULD BE DENIED**

12 Plaintiffs argue that the Trial Date, the Discovery Cut-Off, and related dates
13 should be continued *ex parte* because: (A) its new counsel needs additional time to
14 get up to speed on the case; (B) it needs additional time to conduct discovery; (C) its
15 new counsel is unavailable for the currently set December 1, 2025 trial date and will
16 be on vacation for the July 22, 2025 deposition of Defendant Polsky (a deposition
17 that Plaintiffs’ current counsel noticed for that date); and (D) Defendants’ Motion to
18 Dismiss was not decided until July 15, 2025. None of these proffered justifications
19 warrant granting the Application. ([ECF No. 75-2] at 1-2.)

20 Indeed, “[t]o justify *ex parte* relief, the moving party must make two
21 showings: (1) ‘the evidence must show that the moving party’s cause will be
22 irreparably prejudiced if the underlying motion is heard according to regular noticed
23 motion procedures’; and (2) ‘it must be established that the moving party is without
24 fault in creating the crisis that requires *ex parte* relief, or that the crisis occurred as a

25
26 between its Original Complaint and First Amended Complaint. While Plaintiffs’
27 initial theory largely revolved around allegations that Defendants had used an
28 unsigned operating agreement to “string” Wingsail along, Plaintiffs entire theory of
the case changed when Defendants confronted them with a signed copy of the
operating agreement at issue. (*Compare e.g.*, Original Complaint [ECF No. 1] at ¶
58 with Second Amended Complaint [ECF No. 64] at ¶ 13.)

1 result of excusable neglect.”” *Valadez v. Cnty. of Los Angeles*, 2022 WL 19914191,
2 at *1 (C.D. Cal. Nov. 18, 2022) (Holcomb, J.) (quoting *Mission Power Engineering*
3 *Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995)). Similarly,
4 reaching the merits of the Application, a case’s scheduling order should “only be
5 modified ‘for good cause and with the judge’s consent.’ Good cause is shown if the
6 party seeking an extension acts with reasonable diligence.” *Sadowski v. Hollywood*
7 *Unlocked, Inc.*, 2020 WL 10506032, at *2 (C.D. Cal. Dec. 8, 2020) (citations
8 omitted).

9 Plaintiffs fail both of these standards.

10 **A. Hiring New Counsel Who Is Not Available For The Trial Of This**
11 **Matter Does Not Justify the Requested Relief**

12 Plaintiffs request that the Court move the scheduled Trial Date, the Discovery
13 Cut-Off, and related dates to give its “new[ly]” hired counsel additional time to get
14 up to speed in this case. ([ECF No. 75-2] at 2.) However, this argument is without
15 merit as this Court (along with many others) have long noted that, “*the arrival of*
16 *new counsel . . . does not warrant ex parte relief amending the trial schedule or*
17 *reopening discovery.*” *12909 Cordary, LLC v. Berri*, 2024 WL 2037413, at *1
18 (C.D. Cal. Feb. 21, 2024) (Holcomb, J.) (citations omitted).

19 Furthermore, Plaintiffs obtaining new counsel this late in the case is entirely
20 of their doing. Not only is this Plaintiffs’ *third* set of attorneys in this case (*see* ECF
21 Nos. 30, 74) but Plaintiffs’ current attorneys have been on this case since May 21,
22 2025. Meanwhile, the Trial Date in this case is set for December 1, 2025—giving
23 Plaintiffs’ new attorneys more than enough time to get up to speed on this
24 straightforward – and misguided – case.

25 **B. Plaintiffs Have Had Eight Months to Conduct Discovery**

26 Plaintiffs also argue that the Application should be granted because their new
27 counsel needs additional time to conduct discovery. However, discovery in this case
28 has been ongoing since November of 2024 and is not set to close until July 25, 2025.

1 ([ECF No. 63], the “Scheduling Order”; Angulo Decl. at ¶ 2.)

2 During this time, Plaintiffs have only propounded a single set of requests for
3 production to each Defendant and noticed one deposition (for three days before the
4 Discovery Cut-Off). (Angulo Decl. at ¶¶ 2-6.) Plaintiffs have not filed a single
5 discovery motion in this case to date. (*Id.*)

6 Eight months was more than enough for Defendants to complete their
7 discovery in this case. The fact that Plaintiffs chose to sit on their hands during this
8 same period is entirely of their own doing. Now, on the eve of the Discovery Cut-
9 Off, Plaintiffs shout “fire” and ask the Court to move the Discovery Cut-Off on an
10 *ex parte* basis because its new attorneys want do conduct more discovery. But
11 Plaintiffs complete lack of reasonable diligence in pursuing discovery over the last
12 eight months forecloses any such relief. *See 12909 Cordary, LLC*, 2024 WL
13 2037413, at *1 (denying *ex parte* application to reopen discovery because “the
14 arrival of new counsel . . . does not entitle parties to . . . otherwise set aside valid
15 and binding order of the court, regardless of the efficiency of any new strategy
16 counsel seeks to follow.”); *Sadowski v. Hollywood Unlocked, Inc.*, 2020 WL
17 10506032, at *2 (C.D. Cal. Dec. 8, 2020) (Denying *ex parte* application to extend
18 discovery cut-off date where “[moving parties] fail to show that they acted with
19 reasonable diligence during the discovery process” because “[moving parties]
20 waited to seek discovery until the eve of the discovery cutoff, even though they had
21 ample time to do so beforehand.”).

22 **C. The Supposed Unavailability of New Counsel Does Not Justify the**
23 **Requested Relief**

24 Similarly, Plaintiffs argue that the Application should be granted because
25 their new counsel: is not available on the Trial Date and will be on a “family
26 vacation” for the July 22, 2025 deposition of Defendant Polsky (a deposition that
27 Plaintiffs’ current counsel noticed). ([ECF No. 75-2] at 2.) Once again, these
28 “crises” are entirely of Plaintiffs own making. *See Valadez*, 2022 WL 19914191, at

1 *1 (“To justify *ex parte* relief . . . it must be established that the moving party is
2 without fault in creating the crisis that requires *ex parte* relief”) (citations
3 omitted).

4 The Trial Date has been set since December 23, 2024. (Scheduling Order,
5 [ECF No. 63].) Plaintiffs were aware of this Trial Date when it hired new counsel,
6 as was their new counsel. Now, months after retaining new counsel and on the eve
7 of the Discovery Cut-Off, Plaintiffs suddenly claim to have discovered this conflict
8 in dates. Additionally, the Application, Memorandum of Points and Authorities,
9 and Deceleration of Plaintiffs’ Counsel in Support Thereof all fail to actually
10 provide the name or case number of this supposedly conflicting trial. (*See* [ECF
11 Nos. 75, 75-1, 75-2.])

12 Again, the fact that Plaintiffs chose to hire counsel who are unavailable on the
13 long-scheduled Trial Date is a problem of their own making. Defendants and their
14 counsel have relied on this Trial Date for months now while planning their own
15 schedules for the upcoming year. Plaintiffs should not be allowed to move this Trial
16 Date by simply hiring counsel who are “unavailable” on those days. *Valadez*, 2022
17 WL 19914191, at *1 (denying *ex parte* application to continue trial date where
18 moving party claimed its attorneys were unavailable due to “other trials” because
19 “[non-moving parties] have reasonable relied upon this trial date while planning
20 their own trial schedule for the upcoming year.”).

21 Relatedly, the assertion by Plaintiffs’ attorney (“Mr. Buus”) that he will be on
22 a “family vacation” during the July 22, 2025 deposition of Defendant Polsky strains
23 credulity given that *Mr. Buus is the one who noticed the deposition for that date.*
24 ([ECF No. 75-1] at ¶ 4; Angulo Decl. at ¶ 4, Ex. A.) The fact that Mr. Buus “would
25 prefer to spend time with my wife and children” should have been something he
26 thought about before noticing a deposition during his “family vacation” and is not
27 Defendants’ problem. ([ECF No. 75-1] at 4.)

28

1 **D. The Recently Decided Motion to Dismiss Does Not Warrant Ex**
2 **Parte Relief**

3 Lastly, Plaintiffs argue that the Application should be granted because
4 Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint (filed
5 January 27, 2025) was not decided until July 15, 2025. However, moving the Trial
6 Date, Discovery Cut-Off, and related dates at this stage is unwarranted for two
7 reasons.

8 First, Plaintiffs have not acted with "reasonable diligence" in that they have
9 done next to nothing to prosecute this case since discovery began, propounding only
10 one set of requests for production per Defendant, noticing only one deposition (set
11 for three days before the Discovery Cut-Off), and not filing any discovery motions
12 in the past eight months. (Angulo Decl. at ¶¶ 2-6.) *See Sadowsk*, 2020 WL
13 10506032, at *2 (holding that scheduling order should only be modified if "the party
14 seeking an extension acts with reasonable diligence."); *In re Imperial Credit Indus., Inc. Sec. Litig.*, 252 F. Supp. 2d 1005, 1017 (C.D. Cal. 2003) (denying *ex parte*
15 application to continue discovery cut-off because, while discovery had been stayed
16 for several months leading up to the discovery cut-off, the moving party had failed
17 to "diligently pursue discovery during the more than one year . . . when discovery
18 was not stayed."); *Netlist Inc. v. Samsung Elecs. Co.*, 2021 WL 6103541, at *1
19 (C.D. Cal. July 7, 2021) ("If the party seeking the modification [of the scheduling
20 order] 'was not diligent, the inquiry should end' and the motion to modify should
21 not be granted.").

22 Indeed, this case has been pending since 2023 and the Plaintiffs have known
23 this case's material issues and factual disputes all along. Defendants have worked
24 diligently these past eight months to complete their discovery and prepare for the
25 Trial Date. Plaintiffs could have and should have done the same, propounding the
26 discovery requests necessary to investigate their theory of the case as outlined in the
27 Second Amended Complaint. The fact that Plaintiffs may not have known exactly
28

1 what all of Defendants' affirmative defenses might be does not excuse them from
2 seeking even the most basic discovery necessary to prove their own allegations. The
3 Court should not step in to "save" Plaintiffs from their own indolence based solely
4 on their specious argument that the lack of an operative answer in this case
5 somehow prevented them from prosecuting their case entirely.

6 Second, Plaintiffs have long known about the now-impending Discovery Cut-
7 Off and failed to bring a regularly notice motion for a continuance. *See Valadez*,
8 2022 WL 19914191, at *1 ("To justify *ex parte* relief . . . it must be established that
9 the moving party is without fault in creating the crisis that requires *ex parte* relief . .
10 . .") (citations omitted). Indeed, Defendants' timely filed their Motion to Dismiss on
11 January 27, 2025—just 14 days after Plaintiffs' Filed their Second Amended
12 Complaint. (ECF Nos. 64, 68.) There was ample time for Plaintiffs' to seek to
13 continue the Trial Date and the Discovery Cut-Off date via a regularly noticed
14 motion—in say late June or early July. *See, e.g., Stone v. Signode Indus. Grp. LLC*,
15 2022 WL 3574287, at *1 (C.D. Cal. May 25, 2022) ("There is no basis for an *ex
16 parte* application here, given Plaintiff's delay in filing the Motion"); *Mission Power
Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995) ("[F]iling an
17 *ex parte* motion . . . is the forensic equivalent of standing in a crowded theater and
18 shouting, 'Fire!' There had better be a fire."). Instead, Plaintiffs' have knowingly
19 waited until it is too late to file a regularly notice motion and then gone running to
20 the Court for emergency relief. The Court should not indulge this behavior.
21

22
23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

IV. CONCLUSION

For the forgoing reasons, the Court should deny Plaintiffs' *Ex Parte* Application to Continue the Trial Date, Discovery Cut-Off, and related dates.

Dated: July 15, 2025

RUTAN & TUCKER, LLP

By: A.S.A.
Alejandro S. Angulo
Attorneys for Defendants
ANDREW POLSKY and SEFED